



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2024

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.16716 of 2024
and W.M.P.Nos.18358 & 18603 of 2024

Revathy

.. Petitioner

Vs.

1.The Sub Collector,
Office of the Sub Collector,
Tindivanam.

2.D.Sugumar

3.S.Kalaiselvi

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pending on the file of the 1st respondent in No.O.Mu.No.A3/6313/2023 dated 16.11.2023 and quash the same.

For Petitioner .. Ms.G.Selvi George

For Respondents .. Mr.Vadivelu Deenadayalan
Additional Government Pleader
for R1

Mr.A.M.Packianathan
for R2 & R3

**ORDER**

This writ petition has been filed in the nature of certiorari seeking records pending on the file of the 1st respondent, Sub Collector, Office of the Sub Collector, Tindivanam in No.O.Mu.No.A3/6313/2023 dated 16.11.2023 and quash the same.

2.The writ petitioner is the daughter of the 2nd and 3rd respondents. The 2nd and 3rd respondents had given a complaint before the 1st respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The 1st respondent had taken the said complaint on record. Thereafter, since there was no progress, the 2nd and 3rd respondents had filed W.P.No.3175 of 2024 which came up for consideration before a learned Single Judge of this Court, who by an order dated 16.02.2024 had directed as follows after considering the memo filed by the 1st respondent herein:

3. In response, the Sub Collector, Tindivanam has filed a memo dated 16.02.2024 on behalf of the Second Respondent stating as follows:-

"2. It is submitted that enquiry is scheduled on 28.02.2024. Final order will be passed within 12 weeks . Hence, I seek 12 weeks time to consider the Petitioner's representation and dispose the Petition dated 25.10.2023 filed by the Petitioner. Hence filing this memo."



4. In such circumstances, it shall be incumbent upon the Second Respondent to send due notice to the Petitioners and all other persons concerned to attend the hearing on the said date as well as on the subsequent dates to which it is adjourned and ensure that there are atleast two effective hearing every month showing progress of the case. After affording full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, the Second Respondent shall deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to them under written acknowledgment. The report of such compliance shall be filed before the Registrar (Judicial) of the Court.

3. It is also seen from records that the 2nd and 3rd respondents had necessity to also initiate criminal proceedings against the petitioner herein and since, FIR was not registered, they had filed CrI.O.P.No.25907 of 2024 before this Court. The following order was passed on 21.10.2024:

Today, when the matter came up for hearing, the learned Government Advocate (CrI.Side) appearing for the respondent police on instructions submits that pursuant to the direction of the Additional Mahila Court, Alandur, complaint been registered in Cr.No.471 of 2024 on 20.10.2024.

2. In view of the above fact, nothing survives in this petition. Hence, this Criminal Original Petition is disposed of.



4. Thereafter, it is seen that the 1st respondent had issued notice to the petitioner herein in O.Mu.No.A3/6313/2023 on 16.11.2023, calling upon the petitioner herein and attend an enquiry to be conducted. The present writ petition has been filed questioning the said notice.

5. It is contended on behalf of the petitioner that the complaint under Section 23 is not maintainable, since, there is no clause in the Settlement Deed executed by the 2nd and 3rd respondents in favour of the petitioner that there is a reciprocal condition for the petitioner to maintain the 2nd and 3rd respondents. It is contended that in the absence of such a clause, the petition itself is not maintainable before the 1st respondent.

6. It is also contended that the only intention of the 2nd and 3rd respondents is to evict the petitioner from the house wherein she is residing.. It is also contended that this writ petition was earlier referred to Mediation and even before the Mediation, the 2nd and 3rd respondents were adamant and their only demand was that the petitioner should vacate from the residence of the 2nd and 3rd respondents.

7. Primarily, the above facts can be crystallized to the following two points:



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i. That the petition is not affirmative with Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

ii. That the only interest of the 2nd and 3rd respondents was to vacate the petitioner from the residential house.

8. But however, whether the Settlement Deed could be interpreted by this Court or should be interpreted in accordance with circumstances surrounding that particular Settlement Deed is an issue of evidence. That is an issue which can be examined only during the course of enquiry. The 2nd and 3rd respondents must be given an opportunity to explain the circumstances surrounding which the settlement deed was executed and thereafter, the reciprocal helping hand that was expected to be lent by the petitioner herein. These are issues which can be examined only by the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

9. The other issue whether that has to be the 2nd and 3rd respondents' intention in only to vacate the petitioner from the residential house, is a presumption by the petitioner herein. Unless an order is passed to that effect, the petitioner can never



presume and assume the intention of the 2nd and 3rd respondents. The enquiry will have to continue in the manner known to law.

10. The learned counsel for the petitioner had placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Sudesh Chhikara vs. Ramti Devi & another*** reported in ***2022 LiveLaw (SC) 1011*** and placed very specific reliance on Paragraph Nos.13 and 14, which are follows:

13. If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

14. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.



11. It is seen that the said appeal before the Hon'ble Supreme Court had arisen from a petition filed under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It is seen that an order had been passed by the Tribunal and thereafter, it had been questioned before the High Court by way of a writ petition. The order of the Tribunal had been affirmed by the High Court and thereafter, the matter had moved up to the Supreme Court.

12. In the instant case, it is only appropriate that the 1st respondent, the Tribunal, the adjudicating authority is provided with an opportunity to examine the merits of the rival claims and pass an order and thereafter, further steps in accordance with law can be taken. Once there is an efficacious remedy available and the 2nd and 3rd respondents have resorted to such a remedy, the petitioner cannot put spokes on the said process by filing this particular writ petition. Whether the petition has merits or not is an issue which can be examined only by the 1st respondent.

13. Without adverting to the terms of the Settlement Deed to which attention was drawn by the learned counsel, I would direct the 1st respondent to proceed further with the enquiry in manner known to law and endeavor to dispose the same,

**C.V.KARTHIKEYAN,J.**

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as expeditiously as possible. The petitioner may take all plausible grounds before the 1st respondent. But the procedure as stated by law cannot be dispensed with and notice issued cannot be interfered with by this Court. The petitioner as stated above would be granted all opportunity to raise objections and may also put the same in writing.

14.This writ petition stands disposed of with the above directions. No Costs.
Consequently, connected miscellaneous petitions are closed.

11.11.2024

Index:Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation:Yes/No
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To

The Sub Collector,
Office of the Sub Collector,
Tindivanam.

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and W.M.P.Nos.18358 & 18603 of 2024